



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street
Dallas, TX 75242

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: March 2, 2016

Release Number: 201641023

Release Date: 10/7/2016

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:

UIL: 501.03-00

CERTIFIED MAIL – Return Receipt Requested

Dear _____ :

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c)(3) of the code is hereby revoked effective January 1, 20XX.

Our adverse determination was made for the following reasons:

Organizations described in I.R.C. § 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. You have not demonstrated that you are operated exclusively for charitable, educational, or other exempt purposes within the meaning of I.R.C. section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. You have not established that you have operated exclusively for an exempt purpose.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. If you have not already filed these returns and the agent has not provided you instructions for converting your previously filed Form 990 to Form 1120, you should file these income tax returns with the appropriate Service Center for the tax year ending December 31, 20XX and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United States Tax Court, the United States Court of Federal Claims, or the United States

District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed before the 91st day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Paul A. Marmolejo
Acting Director, EO Examinations

Enclosures:
Publication 892



**Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities Division**

Date:

September 4, 2015

Taxpayer Identification Number:

Form:

990-PF

Tax year(s) ended:

December 31, 20XX, 20XX, 20XX

Person to contact / ID number:

Contact numbers:

Phone Number:

Fax Number:

Manager's name / ID number:

Manager's contact number:

Phone Number:

Response due date:

October 5, 20XX

Certified Mail - Return Receipt Requested

Dear

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the

IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Margaret Von Lienen
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended December 31, 20XX December 31, 20XX December 31, 20XX	

Issue:

Is the _____ organized and operated exclusively for exempt purposes under section 501(c)(3) of the Internal Revenue Code?

Facts:

On June 25th, 20XX _____ created a trust named the _____. The Trust Agreement stated the _____ was created exclusively for charitable, religious, scientific, literary and educational purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code.

_____ received its tax exemption on March 9, 20XX via Letter 1076, with an effective date of July 29, 20XX. The _____ was classified as a private foundation within the meaning of section 509(a) of the Code.

Form 1023, Application for Exemption under Section 501(c)(3), _____ stated _____ mission was "_____. " _____ planned to accomplish its exempt activities by making grants exclusively to other qualified 501(c)(3) organizations. _____ will establish an endowment dedicated to grant making as required in IRC 4942. _____ will develop operating procedures to assure that it adheres to the rules of IRC sections 4941, 4942, 4943, 4944, and 4945 as applicable to private non-operating foundations. _____ provided its grant Reporting Guidelines form, sample Grant Application form, Grant Agreement form, and Grant Reporting Form.

The Trustees listed on _____ Form 1023 were _____ and _____.

_____ primary asset was its bank account with _____ ; account number _____. The signature card shows that _____, _____ (sister) and _____ (son) had signature authority.

The organization filed Form 990-PF for the years ending December 31, 20XX, 20XX on November 18, 20XX & May 15, 20XX, respectively.

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reported \$X revenue and \$X expenses on its 20XX Form 990-PF. It reported \$XX,XXX in total revenue and \$X,XXX in total disbursements. The Bank accounts revealed the following checks and debits:

20XX

WITHDRAWAL DATE	AMOUNT	DESCRIPTION	COMMENTS	
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			

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	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
	\$			
Total withdrawals	\$			

20XX

WITHDRAWAL DATE	AMOUNT	DESCRIPTION	CHECK #	COMMENTS	
	\$				
	\$				
	\$				

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	\$				
	\$				
	\$				
	\$				
	\$				
	\$				
	\$				
	\$				
	\$				
	\$				
	\$				
Total withdrawals	\$				

20XX

WITHDRAWAL DATE	AMOUNT	DESCRIPTION	CHECK #	COMMENTS	
	\$				
	\$				
	\$				

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
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Information Document Request 1 (IDR 1), issued on August 5, 20XX asked for all books and records of assets, liabilities, receipts and disbursements. IDR 2, issued on April 15, 20XX asked for to explain the 1) purpose of the above expenses and 2) how did these expenditures serve an exempt purpose. IDR 3, issued on August 7, 20XX asked again to describe 1) the purpose of the above expenses 2) explain how the expenditures serve an exempt purpose and 3) to provide supporting substantiation. Additionally, IDR 3 asked to provide explanations to the following questions:

b) Does the organization currently engage in any charitable activity (including making grants)?

c) Did the organization ever (since inception) engage in any charitable activity (including making grants)?

d) If so, please describe and provide supporting documentation (including documents which detail the grant application and grant selection process.)

No responses were received. has not shown that these expenditures serve an exempt purpose.

Law:

Section 501(c)(3) of the Internal Revenue Code provides for exemption from taxation for organizations "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur athletic competition,..., or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual..."

Section 1.501(c)(3)-1(c)(1) of the Income tax regulations states that "An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities

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which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)-1(d)(1)(ii) of the Income tax regulations states that "An organization is not organized or operated exclusively for one or more of the purposes specified ... unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

Treas. Reg. §1.501(a)-1(c) defines a private shareholder or individual as those persons having a personal and private interest in the activities of an organization. In general, a private shareholder or individual is considered an "insider" with respect to the exempt organization.

Section 1.6033-2(i)(2) of the Income tax regulations provides that "Every organization which is exempt from tax, whether or not it is required to file an annual information return shall submit such additional information as may be required by the Internal Revenue Service for the purpose in inquiring into its exempt status and administering the provisions of subchapter F (section 501 and following), chapter 1 of subtitle A of the Code..."

Better Business Bureau v. United States, 316 U.S. 279 (1945), holds that the existence of a single non-exempt purpose, if substantial in nature, will destroy the exemption under section 501(c)(3). An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such purposes.

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Unitary Mission Church of Long Island, Petitioner v. Commissioner of Internal Revenue, Respondent 74 TC 507, Filed June 3, 1980--The court found: "Net earnings benefited private individuals.]--Petitioner's financial decisions are controlled by X, one of petitioner's ministers, and his wife. X received widely fluctuating 'parsonage allowances' over a three year period as compensation for leading Sunday services and for being available for pastoral counseling. There is no evidence in the administrative record of any differing duties that he performed over these years. ... Held, petitioner is not entitled to exemption from Federal taxation under secs. 501(a) and 501(c)(3), I.R.C. 1954, as amended, because a part of its net earnings inures to the benefit of private shareholders or individuals".

In John Marshall Law School v. U.S., 81-2 U.S.T.C. 9514 (Ct. Cl. 1981), in which the Court found that the Commissioner acted properly in revoking exemption under IRC 501(c)(3) on the grounds of inurement to the controlling officers and their families. The inurement included, but was not limited to, payments to the families as follows: automobile, education and travel expenses, insurance policies, basketball and hockey tickets, membership in a private eating establishment, membership in a health spa, interest-free loans, home repairs, personal household furnishings and appliances, and golfing equipment.

In 63-1 USTC ¶9200, Cleveland Chiropractic College, a Corporation, Petitioner v. Commissioner of Internal Revenue, Respondent,--, (Jan. 17, 1963) Affirming Tax Court, 21 TCM 1, Dec. 25, 299(M), T. C. Memo. 1962-1 [1939 Code Sec. 101(6)--similar to 1954 Code Sec. 501]--The court found: "A college was not entitled to exemption from corporate income tax for 1948-1951 where part of the net earnings of the college was found to have inured to the benefit of one of its trustees through payment of his personal expenses."

In 60-1 USTC ¶9371, Birmingham Business College, Inc.; John Ike Griffith; Hulon A. Spears and Audrey Spears; Carl B. Carter and Jewell Carter, and Jewell Carter, Petitioners v. Commissioner of Internal Revenue, Respondent , (Apr. 04, 1960); The court found that: "Taxpayer, an incorporated business college owned and operated by a brother and two sisters, was not a tax-exempt educational ...

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Substantial portions of its net earnings were distributed to its owner-operators for their personal benefit."

Rev. Rul 59-95, An organization previously held exempt from Federal income tax was requested to produce a financial statement as of the end of the year and a statement of its operations during such year. However, its records were so incomplete that it was unable to furnish such statements. Section 6033 of the Internal Revenue Code of 1954 provides that every organization, except as provided therein, exempt from taxation under section 501(a) of the Code shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and shall keep such records, render under oath such statements, make such other returns and comply with such rules and regulations as the Secretary of the Treasury or his delegate may from time to time prescribe. Held, failure or inability to file the required information return or otherwise to comply with the provision of section 6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of an exempt status.

Rev. Rul. 56-304, Organizations privately established and funded as charitable foundations which are organized and actively operated to carry on one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1954, and which otherwise meet the requirements for exemption from Federal income tax are not precluded from making distributions of their funds to individuals, provided such distributions are made on a true charitable basis in furtherance of the purposes for which they are organized. However, organizations of this character which make such distributions should maintain adequate records and case histories to show the name and address of each recipient of aid; the amount distributed to each; the purpose for which the aid was given; the manner in which the recipient was selected and the relationship, if any, between the recipient and (1) members, officers, or trustees of the organization, (2) a grantor or substantial contributor to the organization or a member of the family of either, and (3) a corporation controlled by a grantor or substantial contributor, in order that any or all distributions made

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to individuals can be substantiated upon request by the Internal Revenue Service.

Government's Position:

failed the operational test of IRC 501(c)(3) on the following grounds:

did not operate exclusively for one or more exempt purposes as required under Treas. Reg. 1.501(c)(3)-1(c)(2). During the years under audit, never provided grants to qualified 501(c)(3) organizations' nor did establish an endowment fund dedicated to grant making activities as stated in Form 1023.

Rather, earnings inured to the benefit of its private shareholder. Analysis of bank records reveal that its expenditures were personal in nature, benefitting trustees in the form of , , , , and . Thus, operated in a way that was comparable to the organizations described in Cleveland Chiropractic College and Texas Trade School.

provided no information on how it conducts its charitable activity. could not explain how its expenditures served to accomplish an exempt purpose or how these payments benefited a charitable class. The Service asked to show how each of these expenditures furthered the organization's exempt purpose, and the organization was unable to show the Service any contemporaneous substantiation or the purpose of these expenses.

As required by Revenue Ruling 56-304, did not provide adequate records to show the purpose for which the aid was given; the manner in which the recipient was selected and the relationship, if any, between the recipient and (1) officers, or trustees of the organization, (2) a grantor or substantial contributor to the organization or a member of the family of either, and (3) a corporation controlled by a grantor or substantial contributor, in order that any or all distributions made to individuals can be substantiated upon request by the Internal Revenue Service.

